Ulimas Sdn Bhd v Hi-Summit Construction Sdn Bhd and other appeals

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NOS 02(I)-21–03 OF 2014(W), 02(I)-22–03 OF 2014(W) AND 02(I)-28–03 OF 2014(W)
ARIFIN ZAKARIA CHIEF JUSTICE, RAUS SHARIF PCA, SURIYADI, AHMAD MAAROP AND AZAHAR MOHAMED FCJJ
12 JANUARY 2017

Civil Procedure — Preliminary objection — Oral objection — Whether trial judge erred in upholding objection — Locus standi — Whether majority shareholder had locus standi to object to filing of respondent's suit — Whether trial judge erred in considering assertions of majority shareholder — Warrant to act — Whether trial judge erred in refusing to accept warrant to act by counsel representing respondent company — Whether there was unanimous assent by all directors of respondent for commencement of suit — Whether act of majority of board would be valid — Whether trial judge erred in allowing objection to be made orally without any formal application

Companies and Corporations — Directors — Authority — Whether directors accountable to shareholders — Internal management of company — Whether suit duly authorised by directors of respondent — Whether courts could interfere with internal management of company

Hi-Summit Construction Sdn Bhd ('the respondent') filed three separate civil suits against Ulimas Sdn Bhd ('the first appellant'), Bright Focus Sdn Bhd ('the second appellant') and Konsortium Lapangan Terjaya Sdn Bhd ('the third appellant'), a joint venture company. It was the respondent's case that the appellants had unlawfully transferred the respondent's shares in the third appellant to the first appellant. At the hearing of the seven interlocutory applications before the High Court, the appellants raised a preliminary objection challenging the authority of the counsel representing the respondent. The appellants' application, which was made orally and without prior notice, was in regard to the lack of authority of the respondent's counsel to act on behalf of the respondent. In addition, one Miss Lim Chew Yin ('Ms Lim'), who was the beneficial owner of the majority of the shares in the respondent company, was present in court and informed the court that she was not interested in pursuing the writ action. The respondent's counsel submitted that his firm had the authority to act for the respondent by virtue of a warrant to act signed by two of the three directors of the respondent company. The High Court judge upheld the preliminary objection raised by the appellants and summarily struck out the writs against the appellants. The respondent appealed

to the Court of Appeal which found, inter alia, that the warrant to act signed by two of the three directors of the respondent company considered in the light of articles 102, 103 and 116 of the articles of association of the respondent company was sufficient authorisation for the commencement of the writ action against the appellants. As such, the Court of Appeal allowed the respondent's appeal with costs. The appellants have obtained leave to proceed with the present appeal.

Held, dismissing the appeal with costs:

(1) The Court of Appeal was correct in its finding that the trial judge had acted in error in allowing Ms Lim the right to address the court when she was a stranger to the action before the court. Although Ms Lim was a majority shareholder in the respondent company, that did not clothe her with the locus standi to object to the filing of the respondent's suit. It is a trite principle of company law that directors were only accountable to the company and not to the shareholders. Therefore, directors could act contrary to the wishes of the shareholders. Further, in the light of s 163(4) of the Companies Act 1965 ('the Act'), as of the date of the hearing before the High Court, Ms Lim did not have any registered interest in the respondent company and as such no locus to intervene in the matter. In the circumstances, the trial judge had erred in taking into consideration Ms Lim's assertions, in allowing the appellants' preliminary objection (see paras 10–12 & 28).

(2) Under s 131B of the Act, the power of management in a company would rest solely in the hands of the board of directors. In the present case, the board of directors had passed a resolution to commence and continue with the suit against the appellants, as was evident from the warrant to act signed by two of the three directors of the respondent company. Although the third director of the respondent company, Rahmat bin Ramli, had not signed the warrant to act, he had not complained about the filing of the suit by the respondent company. On the contrary, it could be inferred from his conduct that he had assented to the commencement of the suit. Thus, it was apparent in the present case that there was unanimous assent by all the directors of the respondent for the commencement of the suit and the continuation of the same. In the alternative, the act of the majority would be valid by reason of article 109 of the articles of association of the respondent. In the circumstances, the warrant to act could be construed as a resolution in writing under article 109. As such, the suit was duly authorised by the board of directors of the respondent (see paras 13–23).

(3) As a general rule the courts had always refrained from interfering with the internal management of the company. Thus, it would be absurd and an affront to the fundamental principles of company law, to require the

court to go behind a warrant to act and investigate the internal management of a corporate litigant (see paras 24–25).

(4) Further, if the appellants chose to object, then such an objection ought to have been made formally by way of summons or motion and not by oral application as in the present case. In the circumstances, the trial judge had erred in allowing the objection to be made orally without any formal application (see paras 27–28).

[Bahasa Malaysia summary

Hi-Summit Construction Sdn Bhd ('responden') telah memfailkan tiga guaman sivil berasingan terhadap Ulimas Sdn Bhd ('perayu pertama'), Bright Focus Sdn Bhd ('perayu kedua') dan Konsortium Lapangan Terjaya Sdn Bhd ('perayu ketiga'), sebuah syarikat usahasama. Ia adalah kes responden bahawa perayu-perayu telah secara tidak sah memindahkan saham responden dalam perayu ketiga kepada perayu pertama. Semasa perbicaraan tujuh permohonan interlokutori di hadapan Mahkamah Tinggi, perayu-perayu telah menimbulkan bantahan awal mencabar autoriti peguam yang mewakili responden. Permohonan perayu-perayu, yang telah dibuat secara lisan dan tanpa notis terdahulu, berkenaan peguam responden yang tiada kuasa untuk bertindak bagi pihak responden. Tambahan pula, Cik Lim Chew Yin ('Cik Lim'), yang merupakan pemilik benefisiari majoriti saham dalam syarikat responden, hadir di mahkamah dan memberitahu mahkamah bahawa dia tidak berminat untuk meneruskan tindakan writ itu. Peguam responden berhujah bahawa firmanya mempunyai kuasa untuk bertindak bagi responden menurut waran untuk bertindak yang ditandatangani oleh dua daripada tiga pengarah syarikat responden. Hakim Mahkamah Tinggi mengekalkan bantahan awal yang ditimbulkan oleh perayu-perayu dan secara terus membatalkan writ-writ terhadap perayu-perayu. Responden merayu kepada Mahkamah Rayuan yang mendapati, antara lain, bahawa waran untuk bertindak yang ditandatangani oleh dua daripada tiga pengarah syarikat responden itu dipertimbangkan berdasarkan artikel-artikel 102, 103 dan 116 artikel penubuhan syarikat responden merupakan kebenaran mencukupi untuk memulakan tindakan writ terhadap perayu-perayu. Oleh itu, Mahkamah Rayuan membenarkan rayuan responden dengan kos. Perayu-perayu telah memperoleh kebenaran untuk memulakan rayuan ini.

Diputuskan, menolak rayuan dengan kos:

(1) Mahkamah Rayuan adalah betul dalam penemuannya bahawa hakim perbicaraan telah bertindak secara terkhilaf kerana telah membenarkan Cik Lim hak untuk bersuara di mahkamah apabila dia seorang asing kepada tindakan di hadapan mahkamah. Walaupun Cik Lim merupakan pemegang majoriti saham dalam syarikat responden, ia tidak memberikannya locus standi untuk membantah pemfailan guaman responden. Ia adalah prinsip lapuk undang-undang syarikat bahawa

pengarah hanya bertanggungjawab kepada syarikat dan bukan pemegang saham. Oleh itu, pengarah boleh bertindak bertentangan dengan hasrat pemegang saham. Selanjutnya, berdasarkan s 163(4) Akta Syarikat 1965 ('Akta tersebut'), sehingga perbicaraan di hadapan Mahkamah Tinggi, Cik Lim tidak mempunyai apa-apa kepentingan berdaftar dalam syarikat responden dan oleh itu tiada locus untuk campur tangan dalam perkara itu. Dalam keadaan tersebut, hakim perbicaraan terkhilaf dalam mempertimbangkan penegasan Cik Lim, dalam membenarkan bantahan awal perayu-perayu (lihat perenggan 10–12 & 28).

(2) Di bawah s 131B Akta tersebut, kuasa pengurusan dalam syarikat terletak secara mutlak di tangan lembaga pengarah. Dalam kes ini, lembaga pengarah telah meluluskan resolusi untuk memulakan dan menyambung dengan guaman terhadap perayu-perayu, kerana ia jelas daripada waran yang ditandatangani oleh dua daripada tiga pengarah syarikat responden. Walaupun pengarah ketiga syarikat responden, Rahmat bin Ramli, tidak menandatangani waran untuk bertindak itu, dia tidak mengadu tentang pemfailan guaman oleh syarikat responden. Sebaliknya, ia boleh dianggap daripada perlakuannya bahawa dia telah bersetuju dengan pemulaan guaman itu. Oleh itu, ia jelas dalam kes ini bahawa terdapat persetujuan sebulat suara oleh semua pengarah responden untuk memulakan guaman itu dan menyambung yang sama. Secara alternatif, tindakan majoriti adalah sah oleh sebab artikel 109 kepada artikel penubuhan responden. Dalam keadaan itu, waran untuk bertindak boleh ditafsir sebagai resolusi secara bertulis di bawah artikel 109. Oleh itu, guaman tersebut telahpun dibenarkan oleh lembaga pengarah responden (lihat perenggan 13–23).

(3) Berdasarkan rukun am mahkamah sentiasa enggan mengganggu pengurusan dalaman syarikat. Oleh itu, ia melampau dan bercanggah dengan prinsip asas undang-undang syarikat, untuk menghendaki mahkamah membelakang waran untuk bertindak dan menyiasat pengurusan dalam litigan korporat (lihat perenggan 24–25).

(4) Selanjutnya, jika perayu-perayu memilih untuk membantah, maka bantahan tersebut patut dibuat secara formal melalui sama atau usul dan bukan melalui permohonan lisan sepertimana dalam kes ini. Dalam keadaan berikut, hakim perbicaraan telah terkhilaf kerana membenarkan bantahan dibuat secara lisan tanpa apa-apa permohonan formal (lihat perenggan 27–28).]

Notes

For cases on authority, see 3(1) *Mallal's Digest* (5th Ed, 2015) paras 200–215.
For cases on preliminary objection in general, see 2(4) *Mallal's Digest* (5th Ed, 2015) paras 7644–7680.

Cases referred to

Howard Smith Ltd v Ampol Petroleum Ltd [1974] 1 All ER 1126; (1974) 3 ALR 448, PC (refd)
Lim Hock Chuan v New Shine Industries Sdn Bhd [2013] 6 BLR 127 (refd)
Richmon v Branson & Son [1914] 1 Ch 968, Ch D (refd)
Scott & English (M) Sdn Bhd v Yek Toh Ming [1985] 1 MLJ 451 (refd)
Teo Kiong Huat v Syarikat Perusahaan Kelapa Sawit Sdn Bhd [2011] MLJU 892, HC (refd)
The New Pinnacle Group Silver Mining Co v The Luhrig Coal & Ore Dressing Appliances Co [1900] 21 NSWR 297 (refd)
Yeng Hing Enterprise Sdn Bhd v Liow Su Fah [1979] 2 MLJ 240, FC (refd)
Yonge v Toynbee [1908-10] All ER Rep 204; [1910] 1 KB 215, FC (refd)
Yukilon Manufacturing Sdn Bhd & Anor v Dato Wong Gek Meng & Ors [1997] 2 MLJ 212, HC (refd)

Legislation referred to

Companies Act 1965 ss 131B, 163(4), 181A

Loh Siew Cheang (Tan Jee Tjun and Gokhul Radhakrishnan with him) (Thomas Philip) in Appeal No 02(I)-21–03 of 2014(W) for the appellant.
Yiew Voon Le (CH Yeoh & Yiew) in Appeal No 02(I)-22–03 of 2014(W) for the appellant.
Ang Hean Leng (Lee Hishammuddin Allen & Gledhill) in Appeal No 02(I)-28–03 of 2014(W) for the appellant.
Su Tiang Joo (R Jayasingam, Teh Eng Lay and Faye Lim with him) (BH Lawrence & Co) in Appeal Nos 02(I)-21–03 of 2014(W), 02(I)-22–03 of 2014(W) and 02(I)-28–03 of 2014(W) for the respondent.

Arifin Zakaria Chief Justice (delivering judgment of the court):

INTRODUCTION

[1] There are three appeals before this court namely:

(a) Civil Appeal No 02(I)-21–03 of 2014(W) with Ulimas Sdn Bhd as the appellant ('the first appellant') and Hi-Summit Construction Sdn Bhd as the respondent;

(b) Civil Appeal No 02(I)-22–03 of 2014(W) with Bright Focus Sdn Bhd as the appellant ('the second appellant') and Hi-Summit Construction Sdn Bhd as the respondent; and

(c) Civil Appeal No 02(I)-28–03 of 2014(W) with Konsortium Lapangan Terjaya Sdn Bhd as the appellant ('the third appellant') and Hi-Summit Construction Sdn Bhd as the respondent.

For convenience, in this judgment the three appellants will be collectively referred as 'the appellants'.

[2] Leave to appeal was granted by this court on 25 February 2014. The questions of law posed to us are as follows:

(i) where unauthorized legal proceedings are not ratified or adopted by a principal sooner than striking out by a court of law, does the doctrine of ratification in *Danish Mercantile Co Ltd & Ors v Beaumont & Anor* [1951] 1 All ER 925; [1951] Ch 680 extends to include legal proceedings that have been struck out and no longer exists?

(ii) where authority of a solicitor to use the name and engage a company in litigation is in doubt or is challenged, is a court of law bound to accept a warrant to act produced by the solicitor containing the signature of a director as conclusive evidence of authority given by the company as a legal person without more? and

(iii) where the articles of a company provide that the business of the company shall be managed by the directors who may exercise all powers of the company which are not required by the Companies Act 1965 or by the articles to be exercised by shareholders in general meeting, whether such an article in law vests the general powers in management in the board of directors as a collegiate body and not upon any individual directors?

BRIEF FACTS

[3] The pertinent facts are as follows. On 9 December 2003, the respondent filed a suit in the Kuala Lumpur High Court (Civil Suit No D3–22–1958 of 2003) against the appellants claiming, among others, 19% of shares or equity in the third appellant, a joint venture company, who had a valuable highway concession worth RM1.7 billion (a federal government highway project known as 'Maju Expressway'), a dedicated highway linking Kuala Lumpur to Putrajaya and Cyberjaya. It is alleged that the appellants had unlawfully transferred the respondent's shares in the third appellant to the first appellant.

[4] The writ was struck out by the High Court on 12 April 2011.

[5] The circumstances leading to striking out of the writ may be summarised as follows. At the hearing in the High Court on 12 April 2011, seven interlocutory applications were fixed for hearing. However, prior to the hearing of the applications, learned counsel for the appellants, orally and without prior notice, raised a preliminary objection. The appellants' preliminary objection was in regard to the lack of authority on the part of Messrs BH Lawrence & Co ('Messrs Lawrence') to act on behalf of the respondent.

[6] It is pertinent to note that when the seven applications were called up, one Ms Lim Chew Yin ('Ms Lim'), without prior notice to the respondent or the respondent's solicitors, appeared before the court with her counsel, Mr David Mathews. Ms Lim was neither a party to the suit nor to any of the applications that were before the court. Her counsel, Mr David Mathews, with permission of the court, informed the court that his client is the beneficial owner of the majority shares in the respondent company and that she is not interested in pursuing the writ action. It is not disputed that Ms Lim was a beneficial owner of the majority shares of the respondent company.

[7] When challenged, learned counsel for the respondent, Mr Jayasingam was unable to produce the resolution of the board of directors of the respondent company authorising his firm, Messrs Lawrence, to act on behalf of the respondent in the suit. Mr Jayasingam, however, submitted that his firm had the authority to act by virtue of a warrant to act dated 3 December 2003. The warrant to act was signed by two of the three directors of the respondent company. The two directors who signed the warrant to act were Dato' Suhaimi bin Ibrahim and Mr Irwan Shah bin Abdullah. The third director, one Abdul Rahmat bin Ramli, did not sign the warrant to act.

[8] Mr Jayasingam further submitted that, in the event the court were to find the warrant to act insufficient, the court should stay the proceedings and direct the appellants to make a formal application by way of summons or motion to challenge Messrs Lawrence's authority. The stay application was however refused. The learned judge upheld the preliminary objection and summarily struck out the writ. The learned judge's reasons were contained in the following excerpts of her judgment:

> [11] ... Now, in order to be effective in relation to the first plaintiff company, that warrant must be accompanied by a resolution, which at the barest minimum, is to the effect that the first plaintiff company had resolved that legal proceedings be initiated in respect of the matters or complaints in this suit. Ideally, that resolution ought to include a declaration that the directors or certain directors be authorised to liase with solicitors appointed for those legal proceedings.
>
> [12] By the first plaintiff's own solicitors' admission, there is no resolution by the first plaintiff company to sue these Defendants and to authorise certain individuals to take the necessary actions. On that score, this case is entirely distinguishable from the factual matrix in *Yukilon* and also *William Jacks*. The want of resolution is an admitted fact and that is sufficient to deal and dispose of the objections raised by the defendants without the necessity of a formal application.
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> ...
>
> [14] In any case, I do not think it proper to take that route in view of the recent orders made by the Court of Appeal. Those orders cannot be ignored. The directors of the first plaintiff company (the appellant) now hold their shares on trust for Miss Lim and they cannot act in defiance of or contrary to her directions and decision.

Through her counsel, she has clearly indicated that she is not interested in pursuing the present action. The court ought to take cognisance of Miss Lim's views as the majority shareholder.

PROCEEDINGS IN THE COURT OF APPEAL

[9] Aggrieved, the respondent then appealed to the Court of Appeal. The Court of Appeal allowed the respondent's appeal with costs. The Court of Appeal held:

In our judgment, we agree with the submission of Mr Su, learned counsel for the appellant, that the warrant to act dated 3 December 2003 signed by two out of the three directors of the appellant company, and considered in the light of articles 102, 103 and 116 of the articles of association of the appellant's company, was sufficient authorisation for the commencement of the action.

...

We note that the authenticity of the warrant to act produced by Mr Jayasingam before the learned High Court judge is not disputed; nor is it disputed that there are only three directors in the appellant's board of directors, and that the warrant to act was signed by the majority of the directors.

...

In our judgment, in the present case, the parties orally challenging the appellant's solicitors' authority to act, that is to say, the respondents, had failed to show 'sufficient or admitted evidence' that there was no action properly before the High Court. On the contrary, the appellant's counsel was able to show that it had the warrant to act.

...

In our judgment, upon a proper examination of the judgment in *William Jacks* and the English authorities cited and relied upon therein, we are of the view that a challenge to authority to act, as a rule, should be made only by way of a formal application (by summons or motion), and not to be made orally from the bar. Any challenge to authority to act may be made orally from the bar only in exceptional circumstances; and, even then, the court should be extremely slow to entertain such an oral challenge. The court should only entertain an oral challenge made from the bar where there is before the court evidence of a clear and unequivocal admission on the part of the solicitors (whose authority to act for a party is being challenged) that they have no authority to act for the party that they purport to act, or where, it is plain and obvious from the evidence before the court that the solicitors have no authority to act for a party.

...

Now, in respect of Ms Lim Chew Yin's assertion that she was not interested in pursuing the appellant's action, ...

With respect, in our judgment, the learned judge erred in taking into account the views of Ms Lim. This is because Ms Lim was not a party to the action and,

therefore, had no locus standi in the proceedings. And her views were only communicated to the court via counsel from the bar.

DECISION OF THIS COURT

The assertion by Ms Lim

[10] For convenience, we will first deal with the claims made on behalf of Ms Lim, which the learned judge took into consideration in allowing the preliminary objection by the appellants. It would appear that on the date of the hearing, learned counsel for Ms Lim, Mr David Matthews, with leave, informed the court that Ms Lim is the beneficial owner of the majority shares in the respondent company and that she was not keen to proceed with the suit. From the judgment, it is clear that this was one of the factors that persuaded the learned judge in allowing the preliminary objection. The issue is whether it is proper for the court to allow Ms Lim, through her counsel to address the court? Having considered the issue at hand, we agree with the Court of Appeal in that the learned trial judge had acted in error in giving the learned counsel for Ms Lim the right to address the court as Ms Lim is a complete stranger to the action before the court. She may be the beneficial owner of the majority shares in the respondent company but that does not clothe her with the locus standi to object to the filing of the suit. It is trite principle of company law that directors are only accountable to the company not to the shareholders, therefore, directors may act contrary to the wishes of the shareholders. This is clearly borne out in the Privy Council case of *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] 1 All ER 1126; (1974) 3 ALR 448 cited by the Court of Appeal in support of its decision.

[11] Further, we agree with the Court of Appeal that in light of article 17 of the appellant's articles of association read together with s 163(4) of the Companies Act 1965, as of the date of the hearing before the High Court, Ms Lim did not have any registered interest in the share of the company and as such she has no locus whatsoever to intervene in the matter. This view also finds support in the decision of this court in *Yeng Hing Enterprise Sdn Bhd v Liow Su Fah* [1979] 2 MLJ 240.

[12] For the above reasons, we hold that the learned judge had erred in taking into consideration the assertion by Ms Lim, through her counsel, Mr David Mathews, in allowing the preliminary objection of the appellants.

Warrant to act

[13] In the present case, there was in fact a decision of the board of directors of the respondent to commence and continue with the suit. This is evident by

the warrant to act dated 3 December 2003 signed by two out of three directors. This is further supported by the conduct of the third director in assenting to the commencement and continuation of the suit.

[14] Reliance may also be placed on s 131B of the Companies Act 1965 which provides that the power of management in a company rests solely in the hands of the board of directors. It reads:

> 131B Functions and powers of the board
>
> (1) The business and affairs of a company must be managed by, or under the direction of, the board of directors.
>
> (2) The board of directors has all the power necessary for managing and for directing and supervising the management of the business and affairs of the company subject to any modification, exception or limitation contained in this Act or in the memorandum or articles of association of the company.

[15] Article 116 of the respondent's article of association may also be relied upon in support of the same. It reads:

> 116. The business of the Company shall be managed by Directors who may exercise all such powers of the Company as are not by the Act or by these presents required to be exercised by the Company in General Meeting, subject nevertheless to any regulations of these presents, to the provisions of the Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions as may be prescribed by Special Resolution of the Company, but no regulation so made by the Company shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made. The general powers given by this Article shall not be limited or restricted by any special authority or power given by this Article shall not be limited or restricted by any special authority or power given to the Directors by any other Article provided that any sale of the Company's main undertaking shall be subject to ratification by the members in general meeting.

[16] We would also like to add that initially, Abdul Rahmat bin Ramli ('the third director') was a co-plaintiff to the suit. He was aware that the suit was also commenced by the respondent as a plaintiff. There is nothing to indicate that Abdul Rahmat bin Ramli was in any way against the suit. It is thus apparent from his conduct and the steps he took from the outset that he had assented to the commencement of the suit even though he did not sign the warrant to act.

[17] Furthermore, Abdul Rahmat bin Ramli had assented to the following: (i) the resolution dated 12 April 2011, ratifying the commencement of the suit; (ii) the resolution dated 20 April 2011, for the filing of the warrant to act in the appeal, an attempt at reinstating the suit; and (iii) the resolution for the continuation of the suit in the High Court during the board meeting held on

8 February 2014. It is, therefore, clear that by agreeing to these resolutions, Abdul Rahmat bin Ramli had expressly given his assent to the commencement and continuation of the suit.

[18] Moreover, Abdul Rahmat bin Ramli is one of the applicants in the s 181A Originating Summons and one of the appellants in the s 181A Appeals, which is the application for leave of the High Court to continue with the suit. By the same token, Abdul Rahmat bin Ramli may be taken to have agreed to the commencement and the continuation of the suit.

[19] In short, it is apparent in the present case that there was unanimous assent by all the directors of the respondent for the commencement of the suit and the continuation of the same.

[20] In the alternative, we hold that the act of the majority is valid by reason of article 109 of the article of association of the respondent which provides:

> 109. *A resolution in writing signed by a majority of the Directors for the time being in Malaysia shall be as effective* as a resolution passed at a meeting of the Directors duly convened and held, and may consists of several documents in the like form, each signed by one or more of the Directors. (Emphasis added.)

[21] Accordingly, we hold that even though the warrant to act dated 3 December 2003 does not carry with it the formalities of a written resolution, the contents and intention expressed are clear to constitute a decision or a resolution in writing made pursuant to article 109. Therefore, the warrant to act may, in the circumstances, be construed as a resolution in writing under article 109. Accordingly, we hold that the suit was duly authorised by the board.

[22] The above conclusion found support in the following authorities:

Yukilon Manufacturing Sdn Bhd & Anor v Dato Wong Gek Meng & Ors [1997] 2 MLJ 212, in that case, a preliminary objection was raised on the authority of the solicitors acting for the plaintiffs on the basis that there was no company's resolution for the appointment. There was, however, a letter signed by two directors of the company. Abdul Malik Ishak J after persuing the article of association held as follows:

> Now, the sum total of arts 93, 97 and 104 of the articles in no uncertain terms gave to the two directors of the first plaintiff the competency to exercise all the powers of the first plaintiff which must necessarily include and extend to the management of the business of the first plaintiff. Thus, when the two directors authorised Messrs Gan & Lim to take court proceedings against the first, second and the fourth defendant as reflected in the letter dated 7 December 1996, that would be sufficient to vest Messrs Gan & Lim with the necessary powers to act accordingly.

...

In my judgment, the letter dated 7 December 1996 was an act of authorisation authorising or employing Messrs Gan & Lim to act on behalf of the plaintiffs. This constitutes the solicitor's retainer by the client. By the giving and acceptance of the retainer, the solicitor acquires his authority to act for the client and whatever the solicitor does, it would bind the client. The client thus became bound both personally as between himself and his solicitor (*Bolden v Nicholay* (1857) 3 Jur NS 884, *Adams v London Improved Motor Coach Builders Ltd* [1921] 1 KB 495 (CA) where the presumption is that the client is liable for the solicitor's costs) and as between himself and third persons. As a general rule, a person has the right to retain the solicitor of his own choice so long as the solicitor is willing to act and is not precluded by the law or by the professional rules from so doing. There is nothing to prevent Messrs Gan & Lim to act for the plaintiffs. The letter dated 7 December 1996 put the issue of authorisation to act to rest.

(See also *Teo Kiong Huat v Syarikat Perusahaan Kelapa Sawit Sdn Bhd* [2011] MLJU 892; *The New Pinnacle Group Silver Mining Co v The Luhrig Coal & Ore Dressing Appliances Co* [1900] 21 NSWR 297; and *Lim Hock Chuan v New Shine Industries Sdn Bhd* [2013] 6 BLR 127).

[23] As alluded to earlier, there is no provision in the Companies Act 1965 stipulating that a formal board resolution is required in order for a company to appoint solicitors and we find no plausible reason for such a restriction to be read into the Act. In the present case, it is only Abdul Rahmat bin Ramli, the director who did not sign the warrant to act, who is in a position to complain. He did not do so. On the contrary, it can be inferred from his conduct that he had assented to the commencement of the suit.

[24] As a general rule, the courts have always refrained from interfering with the internal management of company. Similarly, when dealing with authority to commence legal proceedings, it is absurd for us to go behind the written warrant to act as the board can always ratify any action commenced without proper authority. To require the court to go behind a warrant to act and investigate the internal management of a corporate litigant would be an affront to the fundamental principles of company law and the proper administration of justice.

[25] In support, we would refer to *Scott & English (M) Sdn Bhd v Yek Toh Ming* [1985] 1 MLJ 451 (OCJ), where Chong Siew Fai J cited with approval *Halsbury's Laws of England*, (4th Ed) Vol 3 para 1179, which reads:

When counsel appears in court and states that he is instructed, the Court will not inquire into his authority to appear ...

[26] The rationale for this can be found in *Yonge v Toynbee* [1908-10] All ER Rep 204; [1910] 1 KB 215, where the English Court of Appeal observed:

> It is in my opinion essential to the proper conduct of legal business that a solicitor should be held to warrant the authority which he claims of representing the client; if it were not so, no one would be safe in assuming that his opponent's solicitor was duly authorized in what he said or did, and it would be impossible to conduct legal business upon the footing now existing; and, whatever the legal liability may be, the Court, in exercising the authority which it possesses over its own officers, ought to proceed upon the footing that a solicitor assuming to act, in an action, for one of the parties to the action warrants his authority.

[27] On the need for a substantive application to be made to challenge the right of counsel to act, we entirely agree with learned counsel for the respondent that such an objection need to be made formally by way of summons or motion and not by oral application as in the present case. This proposition of practice is supported by high authority (see *Richmon v Branson & Son* [1914] 1 Ch 968 (Ch D)). Therefore, in the present case the learned judge should have stayed the proceedings upon the challenge being made by the appellants' counsel. This is to enable the respondent to obtain the formal resolution of the board. In fact, such a resolution was passed by the board of the respondent on 12 April 2011 after the suit was struck out. In any event, for the reasons adumbrated earlier, we hold that the warrant to act tendered to the court in this case was sufficient to clothe Messrs Lawrence with the authority to act on behalf of the respondent company.

[28] In the result, we hold that the learned High Court judge had erred on all counts, namely:

(a) in considering the assertion made by Ms Lim, the beneficial owner of the majority shares of the respondent company;

(b) in allowing objection to be made orally without any formal application;

(c) in not granting a stay of the proceeding to enable the respondent to do the needful; and

(d) in refusing to accept the warrant to act tendered by learned counsel for the respondent company.

[29] For the above reasons, our answer to question (ii) is in the affirmative. As a corollary, it is therefore, not necessary for us to answer questions (i) and (iii).

CONCLUSION

[30] In the upshot, we dismiss the appeals with costs.

Appeal dismissed with costs.

Reported by Kohila Nesan